IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

Writ Petition No.ll20 of 2005

Nitin R Thorat.. petitioner
vs
Unino of India and ors ..Respondents

Mr Sandeep V Marne for petitioner
Mr.S.M.Shah with Mr Sarkar for respondent no.l to 3

CORAM: A.P.SHAH & D.Y.CHANDRACHUD JJ.

Dated 25.7.2005

P.C:

. Heard Mr Marne, learned counsel appearing for the petitioner, Mr. S M Shah learned counsel for the respondent nos.l to 3. Respondent no. 4 is absent despite notice.

2. This petition is directed against the judgment and order dated l0.l2.2004 passed by the Central Administrative Tribunal in Original Application No.535 of 2003. The facts of the case in brief are that the father of the petitioner Ramdas B Thorat was working as a Mate under respondent no.3 and while in service he died on 5.5.l998 at the age of 39 years. At the time of his death petitioner’s family consisted of the petitioner’s widowed mother aged about 35 years and handicapped brother aged l6

years and sister aged l5 years and the petitioner aged about l7 years and 6 months. All of them were dependent upon the father of the petitioner. The petitioner's mother received a total amount of Rs.89,09l towards terminal benefits of late Ramdas and Rs.l900 was granted as family pension. Because of sudden death of the breadwinner of the family, the family was destitute and was in need of immediate financial relief. However, at the time of death of his father the age of the petitioner was l7 years and six months and therefore he could not immediately apply for compassionate appointment. The mother of the petitioner is not educated and has never worked outside. Therefore after attaining the age of maturity petitioner immediately applied for grant of compassionate appointment by his application dated 24.4.l999.

3. In order to avoid arbitrariness in the matter of grant of compassionate appointment, the Government of India, Ministry of Defence had issued Order dated 3.ll.l993 laying down a marking system for consideration of the cases of compassionate appointment. Under this marking system, various marks have been assigned to various attributes, like amount of family pension, amount of terminal

benefits received by the family, monthly income of earning members, movable/immovable properties held by the family, number of dependents , number of unmarried daughters, number of minor children and left over service.etc. The Order issued on 3.ll.l993 was in respect of the pay scales recommended by the 4th Pay Commission. After the 5th Pay Commission as the new pay scales came into force, the marking system was required to be revised and therefore the Government of India issued Order dt 9.3.200l revising the marking system.

4. The petitioner claims that if the marking system was followed in his case he would be entitled to 84% marks under different parameters for which marks are to be allotted. According to him if the marks are more than 50% he is entitled for grant of appointment on compassionate ground. The application of the petitioner was, however, rejected vide order dated 27.6.2002. The representation dt 20.2.2003 submitted by him was also rejected vide letter dt. 3.4.2003 stating that his request has been rejected for appointment on compassionate ground whereas the request of the respondent no. 4 has been considered and granted.

According to the petitioner the financial status and background of the respondent no. 4 is extremely sound inasmuch as the family of deceased employee has been receiving monthly family pension of Rs.3000 and the family was granted terminal benefits to the tune of Rs.4 lacs. It is also pointed out that the married son of the deceased employee has been working as a police constable at Palghar and has been staying in official accommodation provided to him before his father passed away. Further the family has their own flat in Indira Nagar area of Thane. Inspite of this factual background the compassionate appointment was granted to respondent no. 4, who is married daughter of the deceased employee.

5. The petitioner served notices dated 20.2.2003 and 20.5.2003 on the respondents through his advocate which were not considered nor his application was considered alongiwth other applicants on three consecutive occasions. The petitioner therefore approached the tribunal by filing OA No.555 of 2003 in August 2003. . The tribunal however, dismissed the O A on the ground that the marking system was not prevalent at the time of granting compassionate appointment to

respondent no.4 and in any event since application of the respondent no.4 was prior in point of time it was rightly accepted by the respondents. The tribunal also held that the petitioner's OA was barred by limitation.

6. In our opinion it is impossible to sustain the order of the tribunal. In the first place the tribunal was not right in holding that the marking system was not prevalent at the time of granting compassionate appointment to the respondent no. 4. The earlier Order laying down marking system dated 2.ll.l993 was in force till it was revised by new Order of marking system dated 9.6.200l in view of the introduction of 5th Pay Commission scale. By and large the marking system under the new Order dated 9.3.200l is the same save and except that there are minor modification in the amount of pension etc. But that apart even without considering the case of the petitioner on the marking system any prudent person would not have come to the conclusion that the respondent no 4 was more in need of compassionate employment than the petitioner. As stated earlier the respondent no. 4's family had received terminal benefits amounting to Rs. 4 lacs and family pension of Rs.3000.

Brother of the respondent no. 4 is in employment with police department and is granted official accommodation. The family of the respondent no.4 owns a residential flat in Thane. As against this the petitioner's family received only Rs. 89,000 towards terminal benefits and is granted Rs.l900 as family pension. No member of the petitioner's family owns any immovable property. Apart from this the petitioner has a handicapped brother and unmarried sister to look after. The question as to who applied first for the compassionate appointment is not relevant and in fact it is not even the case of the respondents that compassionate appointment is given on first come first serve basis. In the circumstances the decision of the respondents denying compassionate appointment cannot be sustained.

7. As far as the question of limitation is concerned, the rejection order was passed on 27.6.2002. Thereafter the petitioner's representation was considered on merits and rejected only on 3.4.2003. The OA was filed on l.8.2003. It is well settled that if a subsequent representation is considered on merits and rejected by the Competent Authority the second order of

rejection gives rise to a fresh cause of action. The OA was thus within limitation.

8. In the result, writ petition is allowed.The impugned order of the tribunal is quashed and set aside .The respondent nos.l to 3 are directed to grant compassionate appointment to the petitioner at the immediate next available vacancy in suitable post in the quota of compassionate appointment.